

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2010 - 05/14/2010 Session)

10-6281 [Briefs](#)
US v. Benjamin Joshua
(Britt)

CIVIL COMMITMENT. Does Adam Walsh Child Protection & Safety Act permit civil commitment proceedings against defendant convicted of sex offenses under military law and serving sentence in Bureau of Prisons custody.

PANEL I
Courtroom 2
Room 201 (Green Carpet)

Monday, May 10, 2010

3:30 p.m.

REVD 4/2/10

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2010 - 05/14/2010 Session)

08-4117	Briefs	CRIMINAL LAW & PROCEDURE. Numerous challenges to legality of conviction and sentence.
US v. Darnell Young (Quarles)		
Associations: 08-4118		

08-1777	Briefs	CIVIL. Scope of this Court's remand; appellate jurisdiction; whether district court's ruling improperly deprived plaintiff of FLSA claims; other issues.
David Anderson v. Sara Lee Corporation (Howard)		

09-1249	Briefs	FELA. Should disability benefits offset damages; should contributory negligence issue have been submitted to the jury.
Michael Sloas v. CSX Transportation, Inc (Chambers)		
Associations: 09-1288		

07-4519	Briefs	CRIMINAL. Whether sentencing court properly enhanced Holmes' sentence based upon prior convictions under 18 U.S.C. § 851 (2006); other issues.
US v. Daniel Holmes (Blatt)		

Tuesday, May 11, 2010

PANEL I
Courtroom 1
Room 412 (Red Carpet)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2010 - 05/14/2010 Session)

08-5205	Briefs	CRIMINAL. Whether the district court erred by denying motions to suppress evidence and sever offenses; whether district court correctly calculated sentencing guidelines; jury instruction issues.
<hr/>		
09-1269	Briefs	IMMIGRATION. Whether substantial evidence supports the agency finding that petitioner failed to meet his burden of proof to qualify for relief from removal.
<hr/>		
07-7553	Briefs	SIXTH AMENDMENT. Whether counsel was ineffective for failing to file a notice of appeal.
<hr/>		
08-2219	Briefs	CIVIL. Whether defendants in wrongful death action properly served; denial of motion for additional time and discovery to effect service.

Tuesday, May 11, 2010

PANEL II
Courtroom 2
Room 201 (Green Carpet)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2010 - 05/14/2010 Session)

08-4590	Briefs	CRIMINAL LAW & PROCEDURE.	Whether the trial court erred in instructing the jury on the charge of marriage fraud; other issues.
US v. Nasser Khalaf			
(Thornburg)			

09-1610	Briefs	TITLE VII.	Whether district court erred in holding that no reasonable jury could find that charging party was subjected to hostile and abusive working environment.
EEOC v. Fairbrook Medical Clinic, P.A.			
(Voorhees)			

08-5036	Briefs	FOURTH AMENDMENT.	Whether district court correctly found search proper based on exigency and consent. Sentencing issues.
US v. Lamont Toyer			
(Titus)			

Tuesday, May 11, 2010

PANEL III
Courtroom 3
Room 223 (Tan Carpet)
9:30 a.m.

REVD 4/2/10

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2010 - 05/14/2010 Session)

09-1915	Briefs	ELECTIONS. Whether application of state "sore loser" statute was unconstitutional; other issues.
South Carolina Green Party v. South Carolina (Currie)		
<hr/>		
09-4753	Briefs	CRIMINAL LAW. Whether submission of false timesheets to subcontractor is "within the jurisdiction" of the government under the False Statements Act, 18 U. S. C. § 1001 (2006).
US v. James Jackson (Nickerson)		
<hr/>		
09-1942	Briefs	TRADEMARK INFRINGEMENT. Challenge to summary judgment rulings regarding trademark infringement, unfair competition and tortious interference claims.
Georgia Pacific Consumer Produ v. Von Drehle (Boyle)		
Associations: 09-2054		
<hr/>		
09-1599	Briefs	CONTRACTS. Enforceability of non-compete covenant.
Prym Consumer USA, Incorporate v. Rhode Island (Anderson)		

Tuesday, May 11, 2010

PANEL IV
Courtroom 4
Room 414-D (Tweed Carpet)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2010 - 05/14/2010 Session)

09-1688	Briefs	ADEA. Whether policy that increases deductions to fund retirement plan from employee paychecks based on age constitutes age discrimination.
<hr/>		
08-5078	Briefs	SENTENCING GUIDELINES. Enhancement for unlawful possession of firearm in connection with another felony, USSG Section 2K2.1(b)(6); upward departures. 15 mins. per side
<hr/>		
09-6641	Briefs	Section 2255. Challenge to district court's denial of post-conviction relief on claims of ineffective assistance of counsel.
<hr/>		
09-1429	Briefs	CIVIL. Whether a district court in which a federal equity receivership is pending has subject matter jurisdiction over civil action by the receiver; other issues.

REVD 5/10/10

Tuesday, May 11, 2010

PANEL V
Courtroom 5
Room 339 (Spencer)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2010 - 05/14/2010 Session)

08-4603 [Briefs](#)
US v. Marcellus Thomas
(Osteen)

CRIMINAL. Whether Thomas's right to self representation was violated.

09-1604 [Briefs](#)
Cherrie Haywood v. Gary Locke
(Lee)

CIVIL. Whether district court erred in holding appellants failed to establish prima facie case of discrimination or pretext in their denial of accretion of duties promotions; other issues.

09-1171 [Briefs](#)
RZS Holdings AVV v. PDVSA Petroleo S.A.
(Lee)

CIVIL. Whether Inter-American Convention exclusively governed arbitration award; other issues.

REVD 4/28/10

Wednesday, May 12, 2010

PANEL I
Courtroom 1
Room 412 (Red Carpet)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2010 - 05/14/2010 Session)

09-7933	Briefs	CONSTITUTIONAL LAW. Whether the district court erred in holding that government may forcibly medicate defendant in an attempt to restore her competency.
US v. Kimberly White (Dever)		

09-1589	Briefs	BLACK LUNG BENEFITS. Whether Administrative Law Judge properly evaluated medical evidence and adequately explained evaluation in denial of benefits on living miner and survivor's claims. 15 mins. per side
Othello Massey v. Peabody Coal Company		

08-2343	Briefs	IMMIGRATION. Whether the Board of Immigration Appeals erred in rejecting petitioner's application for adjustment of status.
Yigal Suisa v. Eric Holder, Jr.		

09-1913	Briefs	ADA. Whether diabetic employee is disabled under the Act; whether employer failed to provide employee with reasonable accommodation.
James Schneider v. Giant of Maryland, LLC (Messitte)		

Wednesday, May 12, 2010

PANEL II
Courtroom 2
Room 201 (Green Carpet)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2010 - 05/14/2010 Session)

09-2085 [Briefs](#) CIVIL. Multiple issues arising out of Lanham Act and cybersquatting action.
Employers Council on Flexible v. Kenneth Feltman
(Cacheris)

09-4620 [Briefs](#) CRIMINAL LAW. Whether misrepresentations defendant made on employment verification forms were "material," as that term is
US v. Josue Garcia-Ochoa used in 18 U.S.C. §§ 1001 and 1546.
(Doumar)
Associations: 09-4621

09-4732 [Briefs](#) CRIMINAL. Whether variance sentence of more than two times the guidelines range was reasonable.
US v. Miguel Lopez-Ramirez
(Payne)

09-2083 [Briefs](#) RAILWAY LABOR ACT. Whether the Act requires multi-carrier or group arbitral boards of adjustment be utilized to resolve airline
Air Line Pilots Association In v. US Airways labor dispute; other issues.
(Hilton)

Wednesday, May 12, 2010

PANEL III
Courtroom 3
Room 223 (Tan Carpet)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2010 - 05/14/2010 Session)

09-1768 [Briefs](#) CIVIL. Whether an easement was granted via a recorded subdivision plat; other issues.
Allen Hedgepeth v. Parker's Landing Property
(Fox)

09-1930 [Briefs](#) INSURANCE. Whether under Virginia law insurance agreement requires appellee insurer to defend appellant homeowners
Federal Hill Homeowners Assoc. v. Community association in a suit alleging mental anguish.
(Brinkema)

09-2150 [Briefs](#) CONSTITUTIONAL LAW. Whether plaintiff's constitutional claims under the takings and due process clauses are ripe; other issues.
Acorn Land, LLC v. Baltimore County, Maryland
(Blake)

Wednesday, May 12, 2010

PANEL IV
Courtroom 4
Room 414-D (Tweed Carpet)
8:30 a.m.**

REVD 4/28/10

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2010 - 05/14/2010 Session)

09-6075	Briefs	HABEAS CORPUS. Whether petitioner was entitled to habeas corpus relief on his claim that the anti-shuttling provision of the Interstate Agreement of Detainers Act was violated; due process.
<hr/>		
09-1932	Briefs	CIVIL RIGHTS. Whether law enforcement officers were entitled to qualified immunity in § 1983 case.
<hr/>		
08-1906	Briefs	CIVIL. Whether alleged negligent termination of electrical service proximately caused injuries incurred during house fire started by unextinguished candle.
<hr/>		
09-1584	Briefs	IMMIGRATION. Whether petitioner is eligible for withholding of removal based on his wife's forced abortion.

Yi Ni v. Eric Holder, Jr.

Wednesday, May 12, 2010

PANEL V
Courtroom 5
Room 339 (Spencer)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2010 - 05/14/2010 Session)

09-1199	Briefs	CONSTITUTIONAL LAW. Challenge to constitutionality of Virginia statutes and regulation preventing businesses with mixed beverage licenses from presenting dance performances with erotic content.
Imaginary Images, Incorporated v. Pamela Evans (Spencer)		

09-1441	Briefs	IMMUNITY. Whether North Carolina Secretary of Health and Human Services is immune from suit to enforce Medicaid Act pursuant to 42 U.S.C. § 1983.
D.T.M. v. Lanier Cansler (Howard)		

09-1087	Briefs	ATTORNEY FEES. Whether NTSB's order reversing award of costs and fees under Equal Access to Justice Act is supported by substantial evidence.
James Beauchamp v. FAA		

09-1899	Briefs	CIVIL. Qui tam action arising out of construction of the United States Embassy in Baghdad, Iraq.
US ex rel. John Owens v. First Kuwaiti General (Hilton)		

Thursday, May 13, 2010

PANEL I
Courtroom 1
Room 412 (Red Carpet)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2010 - 05/14/2010 Session)

06-0006	Briefs	CRIMINAL LAW & PROCEDURE. Numerous issues arising out of federal death penalty conviction.
US v. Kenneth Lighty (Messitte)		
Associations: 09-0006		
06-4069	Briefs	CRIMINAL LAW & PROCEDURE. Whether denial of severance and admission of co-defendant's statement violated Bruton; propriety of willful blindness instruction; other issues.
US v. James E. Flood (Messitte)		
06-4180	Briefs	CRIMINAL LAW & PROCEDURE: Issues relating to admissibility of evidence, improper closing argument, and reliance at sentencing upon allegedly involuntary statement and acquitted conduct; denial of new trial.
US v. Lorenzo A. Wilson (Messitte)		
Associations: 09-4573		
09-1938	Briefs	LABOR LAW. Whether substantial evidence supports the Board's findings that the Company violated §§ 8(a)(1) and (3) of the National Labor Relations Act.
Fola Coal Company v. NLRB		
Associations: 09-2057		
REVD 5/10/10		PANEL II Courtroom 2 Room 201 (Green Carpet) 9:30 a.m.
Thursday, May 13, 2010		

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2010 - 05/14/2010 Session)

08-8513	Briefs	CIVIL. Whether Kennedy was required to register as a sex offender under the Sex Offender Registration and Notification Act (SORNA); other issues.
<hr/>		
09-1613	Briefs	CONTRACT LAW. Whether district court erred in granting summary judgment to defendants where release not plead as affirmative defense; other issues.
<hr/>		
07-4900	Briefs	CRIMINAL LAW & PROCEDURE. Whether officer had reasonable suspicion to extend traffic stop; whether drug dog's entry into car was unconstitutional; sentencing issues.
<hr/>		
09-1629	Briefs	IMMIGRATION. Whether the Board properly determined that an alien inadmissible under 8 U.S.C. § 1182(a)(9)(C)(i)(I) (2006) is ineligible for adjustment of status.

Thursday, May 13, 2010

PANEL III
Courtroom 3
Room 223 (Tan Carpet)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2010 - 05/14/2010 Session)

09-2187 [Briefs](#) CONSTITUTIONAL LAW. Did the county's employee furlough plan substantially impair its collective bargaining agreements in Fraternal Order of Police Lodg v. Prince George's violation of the Contract Clause of the Constitution; other issues.
(Williams)

09-1394 [Briefs](#) INSURANCE. Whether appellants are entitled to reimbursement for defense and settlement costs under doctrine of equitable Alpha Construction and Enginee v. The Insurance subrogation; other issues.
(Motz)

09-1480 [Briefs](#) FEDERAL PROCEDURE. Whether district court abused its discretion in refusing to set aside default judgment; whether it erred in Colleton Preparatory Academy, v. Hoover refusing to quash service of process; other issues.
(Norton)

09-1134 [Briefs](#) CIVIL. Propriety of summary judgment on claims of racial discrimination and hostile work environment.
Charles Alford, III v. Martin & Gass, Incorporated
(Brinkema)

Thursday, May 13, 2010

PANEL IV
Courtroom 4
Room 414-D (Tweed Carpet)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2010 - 05/14/2010 Session)

09-1025 [Briefs](#) ERISA. Whether district court applied correct legal standard to denial of claim; propriety of claim.
Gloria Williams v. Metropolitan Life Insurance Co
(Dever)
Associations: 09-1568

09-1622 [Briefs](#) ERISA. Whether district court erred in refusing to award attorney's fees; after acquired evidence defense.
Richard Rinaldi v. CCX, Incorporated
(Conrad)
Associations: 09-1671

09-1690 [Briefs](#) CIVIL. Whether district court erred when it granted appellees summary judgment on appellant's breach of duty and
Tobacco Technology, Inc v. Taiga International misappropriation of trade secrets claims; other issues.
(Blake)

09-4011 [Briefs](#) CRIMINAL. Whether officers had reasonable suspicion to justify stop and frisk; whether Smith was entitled to resist under
US v. Peter Smith Maryland law.
(Blake)

REVD 5/10/10

Thursday, May 13, 2010

PANEL V
Courtroom 5
Room 339 (Spencer)
9:30 a.m.**

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2010 - 05/14/2010 Session)

08-2371	Briefs	CIVIL.	Whether district court erred in dismissing complaint alleging violation of Interstate Land Sales Full Disclosure Act.
Melvin Long v. Merrifield Town Center Limited (Lee)			
Associations: 09-1020			

09-1623	Briefs	TORT LAW.	Numerous issues relating to public nuisance suit brought by the State of North Carolina against federal agency TVA.
State of North Carolina v. Tennessee Valley (Thornburg)			

09-4401	Briefs	CRIMINAL LAW.	Propriety of denial of motion to suppress evidence seized from defendant's vehicle.
US v. Otis Stitt (Doumar)			

REVD 5/13/10

Friday, May 14, 2010

PANEL I
Courtroom 1
Room 412 (Red Carpet)
8:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2010 - 05/14/2010 Session)

08-5254	Briefs	CIVIL. Whether venue was appropriate in Eastern District of Virginia when defendant remained domiciled in New York.
US v. Jonathon Novak (Payne)		

08-4948	Briefs	CRIMINAL LAW. Whether the district court erred in failing to hold a hearing on defendant's new trial motion based on evidence that was not disclosed until after trial; related issues.
US v. Donald Griffin (Motz)		

08-5044	Briefs	CRIMINAL LAW & PROCEDURE. Whether consent of defendant's wife was sufficiently voluntary to support search of residence; other issues.
US v. Romaine Short (Smith)		

REVD 5/13/10

Friday, May 14, 2010

PANEL II
Courtroom 2
Room 201 (Green Carpet)
8:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2010 - 05/14/2010 Session)

08-5160	Briefs	FOURTH AMENDMENT. Whether officers had reasonable suspicion to effectuate a Terry stop; other issues.
US v. Moses Davis		
(Fox)		

08-5161	Briefs	CRIMINAL. Propriety of admission of defendant's statements and threats, evidence of flight, and statements and acts of co-conspirators; multiple conspiracy instruction; sentencing.
US v. Troy Henley		
(Davis)		

08-5219	Briefs	SENTENCING GUIDELINES. Whether upward departure sentence pursuant to USSG §§ 4A1.3 and 5K2.21 was reasonable.
US v. Divine Reddick		15 mins. per side
(Flanagan)		

08-5120	Briefs	SENTENCING. Propriety of applying the stolen-gun enhancement, USSG Section 2K2.1(b)(4), to a defendant with no knowledge the gun was stolen.
US v. Timothy Evans		
(Flanagan)		

Friday, May 14, 2010

PANEL III
Courtroom 3
Room 223 (Tan Carpet)
8:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2010 - 05/14/2010 Session)

08-5252	Briefs	CRIMINAL LAW & PROCEDURE. Whether the district court procedurally erred in imposing the chosen sentence.
US v. Nicholas Ohin (Morgan)		
07-4382	Briefs	CRIMINAL. Whether the district court erred in sentencing guidelines calculations, denying motion for substitute counsel; other issues.
US v. Xavier V. Jennette (Britt)		
09-1700	Briefs	ATTORNEYS' FEES. Whether district court erred in reducing its lodestar fee award to counsel for prevailing plaintiffs based on assessment that value of plaintiffs' claims was modest.
Tanya Jackson v. Estelle's Place, LLC (Brinkema)		
08-5204	Briefs	CRIMINAL LAW. Sufficiency of evidence against defendants convicted of RICO involvement, racketeering conspiracy, racketeering related offenses, and multitude of drug, firearm, and other offenses; other issues.
US v. Gary Toliver, Jr. (Friedman) Associations: 08-5217		

Friday, May 14, 2010

PANEL IV
Courtroom 4
Room 414-D (Tweed Carpet)
8:30 a.m.

REVD 5/10/10